COMMENTS

The enclosed is responsive to the Examiner's Office Action mailed on

April 22, 2003. At the time the Examiner mailed the office action claims 1-6 and

28-48 were pending. By way of the present response the Applicant has: 1)

amended claims 40 and 45; 2) canceled claim 29; and, 3) added new claims 49 -

54. The Applicant respectfully requests reconsideration of the present

application and the allowance of claims 1-6, 28, and 30-54.

In the response mailed April 22, 2003 the Examiner stated that:

> Applicant's arguments filed 2/6/03 have been considered but they
> are not persuasive.
> Applicant argues that Korpela only teaches or suggests the
> downloading of software so that only a single network service type can be
> used at any given time and is incapable of simultaneously communicating
> according to first and second networking service types.
> In response to applicant's arguments against references
> individually, one cannot show obviousness by attacking references
> individually where the rejections are based on combinations of
> references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA
> 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir.
> 1986).
> In this case, as Korpela teaches the mobile to support a single
> networking service type, it is the secondary station of Lanceleot that has
> plurality User Interface 215 that supports simultaneous communicating
> according to first and second networking service types. As Korpela
> teaches downloading new network protocol from the access network, in
> combination with Lancelot, the secondary station with plurality of User
> Interface 215 downloads new protocols stations from Primary station to
> support downloading of new network protocols to be adaptive to new
> backbone protocols.

See, Office Action mailed 4/22/03, pgs. 6-7.

The Applicant respectfully submits that the Examiner does not

comprehend the import of the Applicant's arguments filed 1/27/03. Moreover,

the Examiner has not established a prima facie case of obviousness and is

attempting, through a perverse distortion of the holdings of *In re Keller*, 642 F.2d

413, 208 USPQ 871 (CCPA 1981) and *In re Merck & Co.*, 800 F.2d 1091, 231

USPQ 375 (Fed. Cir. 1986), to avoid the burden placed on the Examiner to establish a prima facie case of obviousness.

The Examiner failed to comprehend the import of the Applicant's following argument stated in the Office Action response filed 1/27/03:

> . . . at best Korpela only teaches or suggests the <u>downloading of software</u> so that only a <u>single</u> network service type can be used <u>at any given time</u> .
> . .
>
> See, Applicant's Response to Office Action, mailed 1/27/03, pg. 10.

In light of the above argument, each of the Applicant's independent claims recite subject matter directed to the <u>downloading</u> of <u>more than one</u> form of service specific software so that <u>different service types can be simultaneously executed</u> over a physical line or hardware platform.

Independent claim 1 recites:

> A method for a single hardware platform to support multiple types of network service, comprising:
>
> detecting a first request to establish a first network connection that flows through the hardware platform;
> determining a first type of network service used by the first network connection;
> downloading in response to the determining, to the hardware platform, software that is specific to the first type of network service;
> executing the software to process traffic over the first network connection according to the first type of network service;
> detecting a second request to establish a second network connection that flows through the hardware platform;
> determining a second type of network service used by the second network connection;
> <u>downloading in response to the determining a second type of network service, to the hardware platform, software that is specific to the second type of network service</u>;
> executing the software that is specific to the second type of network service to process traffic over the second network connection

according to the second type of network service, <u>the software that is specific to the first type of network service being executed simultaneously with the software that is specific to the second type of network service</u> so that the hardware platform can simultaneously process traffic over the first connection and the second connection according to the first and second service types, respectively.

Independent clam 28 recites:

A method, comprising:

downloading a first software image to a card that can

execute the first software image, the first software image

being specific to a first type of networking service so that the

card can provide the first type of networking service over a

physical line that emanates from the card;

<u>downloading a second software image</u> to the card, the card also able to execute the second software image, the second software image being specific to a second type of networking service so that the card can <u>simultaneously provide the second type of networking service over the physical line with the first type of networking service</u>; and

<u>downloading a third software image</u> to the card, the card also able to execute the third software image, the third software image being specific to a third type of networking service so that the card can <u>simultaneously provide the third type of networking service over the physical line with the first and second types of networking services.</u>

Independent claim 40 recites:

A card, comprising:
a) an interface to a physical line, the interface further comprising a line interface unit and a framer;
b) a plurality of digital signal processors and a plurality of processors coupled to local memory resources, said processors and local memory resources to <u>simultaneously execute a plurality of service specific software routines that are each downloaded to said local memory resources</u> as a consequence of a connection manager deciding the card is to simultaneously provide a plurality of different networking service types over the physical line; and,
c) a switch coupled to the interface to receives ingress traffic from the interface, the switch to route the traffic toward the processors.

Independent claim 45 recites:

A card, comprising:
a) first means for interfacing to a physical line;
b) second means for storing <u>a plurality of downloaded service specific software routines for at least two different types of service</u>;

c) third means for <u>simultaneously executing said plurality of downloaded service specific software routines</u> if the card is to simultaneously provide a plurality of different networking service types over the physical line; and,

d) fourth means for receiving ingress traffic from the first means and routing the ingress traffic to the third means.

The Applicant notes that the Examiner **has admitted** that the accumulation of the underlined subject matter above, for each claim above, is not found or suggested in Lancelot or in Korpela; and, as such, **the Examiner has effectively admitted that a prima facie case of obviousness has not been established**. Specifically, the Examiner stated in the Office Action mailed 9/25/03 at page 3:

> "Lancelot fails to explicitly teach <u>downloading</u> in response to the determining, to the hardware platform, <u>software</u> specific to the type of network service"

and stated in the Examiner's Office Action mailed 4/22/03 at page 2:

> "Lancelot fails to explicitly teach <u>downloading software</u> to the hardware platform according to the determination of the network service type."

As such, the Examiner has correctly determined that Lancelot fails to teach or suggest the downloading of software. **If Lancelot fails to teach or suggest the downloading of software, then the following must be true**:

it is impossible for Lancelot to teach or suggest the <u>simultaneous</u> <u>execution</u> of <u>more than one</u> type of <u>downloaded</u> service specific software.

That is, because Lancelot fails to teach or suggest the downloading of software, it is impossible for Lancelot to teach or suggest how downloaded software could be utilized. Therefore, given the existence of the above truism, the Examiner's theory of rejection must **fail to cover each and every element of the Applicant's claims** if Korpela fails to teach the simultaneous execution of more than one type of downloaded service specific software because: 1) the Applicant's independent claims recite such features; and, 2) the Examiner has only used Lancelot and Korpela as a basis for rejection.

The examiner has **admitted** that Korpela fails to teach the simultaneous execution of more than one type of downloaded service specific software by correctly stating in the Office Action response mailed 9/25/02 at page 7:

> "Korpela teaches the mobile [platform] to support <u>a single</u> networking service type"

Therefore, because the Examiner has correctly admitted that Lancelot fails to teach or suggest the downloading of software (so as to prevent Lancelot from teaching or suggesting how downloaded software might be used), and because the Examiner has correctly admitted that Korpela is limited to teaching or suggesting the use of downloaded software for only a single networking service type at any given time, **the Examiner has effectively admitted that the Examiner has failed to establish a prima facie case of obviousness.**

It is impermissible under the patent laws of the United States for the Examiner to maintain a rejection under 35 USC 103(a) if the Examiner cannot establish a prima facie case of obviousness. "The examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness. If the examiner does not produce a prima facie case, the applicant is under no obligation to submit evidence of non-obviousness." MPEP 2142 (emphasis added). Moreover, "[t]o establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art" MPEP 2143.03 (emphasis added) (i.e., "the prior art reference (or references when combined) must teach or suggest all the claim limitations" MPEP 2143).

The Examiner's incoherent response to the Applicant's arguments as provided in the Office Action mailed 4/22/03 makes plain the fact that the Examiner has failed to establish a prima facie case of obviousness. Better said, if the Examiner had truly developed a prima facie case of obviousness the Examiner would be able to simply and easily show where each element in the Applicant's claims is found in Lancelot or Korpela. Because the Examiner can not simply and easily show where each element in the Applicant's claims is found in Lancelot or Korpela (because such a showing is impossible), the Examiner instead relies on "gibberish" with little reference to the Applicant's specific claim elements (e.g., "[i]n this case, as Korpela teaches the mobile to support a single networking service type, it is the secondary station of Lancelot that has a plurality

User Interface 215 that supports simultaneous communicating according to first and second networking service types. As Korpela teaches downloading new network protocol from the access network, in combination with Lancelot, the secondary station with the plurality of User Interface 215 downloads new protocol stations from Primary station to support downloading of new network protocols to be adaptive to new backbone protocols" Office Action mailed 4/22/03, pg. 7).

Lastly, the Examiner seemingly attempts to avoid the burden of having to find each and every claim element in the prior art (so as to avoid having to establish a prima facie case of obviousness) by stating that the Applicant's attack on Korpela for failing to disclose simultaneous execution of downloaded software of different network service types is improper because "one cannot show non nonobviousness by attacking references individually where the rejections are based on combinations of references". The Examiner cites *In re Keller* and *In re Merck & Co.* to support the Examiner's position. The Applicant respectfully submits that the Examiner's reference to *In re Keller* and *In re Merck & Co.* is an attempt to perversely distort the holdings of these cases.

In both *In re Keller* and *In re Merck & Co.*, the examiner found separate prior art references whose individual teachings and suggestions, when combined, covered all of the Applicant's claim elements. Hence, the issue in both these cases was whether or not non obviousness existed even though the examiner was able to find a teaching or suggestion of each claim element in the prior art. Because each claim element was

actually taught or suggested by the prior art, the rejections of In re Keller and In re Merck & Co. were "based on combinations of references". Better said, whether or not the prior art references actually covered their corresponding claim elements was not in dispute.

In contrast, the Examiner's position in the present application effectively ignores the limitation "based on combinations references" (i.e., that all claim elements are covered is not in dispute) so as to effectively read "one cannot show non obviousness by attacking references individually where the rejection is based on 35 USC 103(a)". This is a preposterous statement of the law because it removes the burden on the Examiner to establish a prima facie case of obviousness by finding each and every claim element in the prior art. The Applicant is certainly free, as is the situation in the present application, to demonstrate non obviousness by "attacking" a reference (Korpela) because it does not teach or suggest that which the Examiner purports it to so teach or suggest (simultaneous execution of more than one type of downloaded service specific software). That is, when the dispute is whether or not one or more claim elements are actually covered by a prior art reference, the portion of In re Keller and In re Merck & Co. that has been cited by the Examiner does not apply.

In light of the foregoing the Applicant respectfully submits that each of independent claims 1, 28, 40 and 45 are patentable over the combination of Lancelot and Korpela and that their corresponding dependent claims are likewise allowable.

As each of the independent claims of the present application are patentable, the Applicant respectfully requests the allowance of all claims.
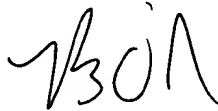
Applicants respectfully submit the present application is in condition for allowance. If the Examiner believes a telephone conference would expedite or assist in the allowance of the present application, the Examiner is invited to call Robert O'Rourke at (408) 720-8300.

Authorization is hereby given to charge our Deposit Account No. 02-2666 for any charges that may be due.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN

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